THE FARM CREDIT COUNCIL

Via E-Mail

November 15, 2013

Mr. Barry F. Mardock
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

RE: RIN 3052-AC88 Regulatory Burden

Dear Mr. Mardock:

The Farm Credit Council (Council), on behalf of its membership, appreciates the opportunity to respond to the FCA's request for comment concerning Regulatory Burden that was published in the July 18, 2013 *Federal Register* (78 Fed Reg 42893).

First, we again want to commend the FCA for the systematic review it conducts of its regulations to determine those that may be revised or eliminated because they are duplicative, ineffective, or impose burdens greater burdens than the benefits received.

The comments that follow were developed after soliciting input from all Farm Credit System (System) institutions. A draft comment letter was then circulated for additional input and incorporated into these comments. Several System institutions will also be submitting their own responses to your request for input. We urge you to consider their comments as you continue your regulatory review.

General

In your recently adopted Fall 2013 Regulatory Agenda you include an "end review of the "Farm Related Services" authority. We note that we commented on this subject in your last review of "regulatory burden". We want to again specifically urge the FCA to consider a revision to Part 613 of your existing regulations regarding eligibility for farm-related service financing (613.3020). We continue to believe that that Farm Credit Act (the "Act") allows the FCA considerable discretion in defining the types of businesses eligible to be considered "farm-related" services. We also believe the existing "50%" requirement for full financing is too restrictive. In many cases involving farm-related businesses, the service component is so interwoven with the product being provided, that an attempt to distinguish the service amount from the

value of the product can be arbitrary. Moreover, in the typical case, the business seeking financing does not distinguish the service component in its accounting records.

In a related matter, we believe the FCA should include "aquatic-related" service providers as eligible for System financing. We find nothing in the Farm Credit Act which dictates the exclusion of aquatic-related service providers from the listing of those entities that are eligible. By specifically authorizing financing for aquatic producers Congress has consistently demonstrated its commitment to put the aquatic industry on a par with farming and ranching in terms of eligibility for System financing. We are aware of numerous instances in which aquatic-related service businesses provide a critical benefit for the aquatic industry. Given Congress's clear intent to help this industry, it is illogical to exclude these service businesses. Moreover, we find that a strong need exists for fishing-related business financing, and that the System is ideally positioned to provide that credit. We believe the FCA should undertake a comprehensive review of this important authority, and remove any impediments to eligibility for System financing that are not based on the Act.

We also believe there is a need to revisit the processing and marketing authority in Sec. 613.3010. In today's agricultural community there is considerable overlap between certain farm-related business services with some processing and marketing operations. The idea that a marketing and processing business provides value to local agriculture only when there is "some" throughput is out of step with the realities of today's local food systems and inhibits Farm Credit's ability to serve the growing local food industry. In many instances the most important factor in the success of small-scale producers is a viable market outlet for their farm products – and very often the best and most progressive business model is a stand-alone marketing and/or processing entity that can buy from multiple independent local producers.

We also note an additional concern regarding Agency interpretations of existing regulations. In many cases, the guidance provided by the FCA with respect to implementing specific regulations is quite helpful. For instance, the guidelines for submissions to form UBEs serve as a useful tool. However, many institutions noted that in other instances it appears the Agency is confusing "other guidance", which may be instructive, with duly adopted regulations, for which there has been notice and an opportunity for comment. One area where this has occurred is in regard to Human Capital Plans (Sec. 618.8440 (b)(7)). System institutions report inconsistent interpretations by examiners regarding the overall adequacy of the plans required by the regulations.

Specific Comments

Collateral - The new UBE regulations grandfather existing UBEs formed to hold and manage collateral that secures distressed loans and provides a notice process for the formation of or investment in acquired property UBEs. Meanwhile, the standards of conduct regulations prohibit System employees and directors from acquiring property owned by the bank or any affiliated association that was acquired as a result of a foreclosure or similar action (except through inheritance, or an open competitive bidding

process). It would be appropriate for the standards of conduct regulation to reference collateral acquired by a System institution directly or through use of an acquired property UBE. Sec. 612.2140(f) and Sec. 612.2150(g).

Production of documents and testimony during litigation - Per current regulations, System institutions cannot produce documents for a court proceeding until the subpoena is signed by a judge. Many states have adopted Rules of Civil Procedure allowing an attorney to act as an officer of the court and sign the subpoena, therefore not requiring a judge. In order to comply with the current FCA regulation, System institutions are oftentimes required to hire an attorney to defend the position that they cannot produce documents under the subpoena without a judge's signature. This is costly and unnecessary. The regulation should be updated to permit (but not require) an institution to respond in cases when an attorney is acting as an officer of the court in states where that is permitted. Sec. 618.8330(b) and BL-066.

FFIEC guidance – FCA often makes reference to guidance from the FFIEC but considers it "voluntary". If FCA wants to keep referencing FFIEC guidance, it would be more appropriate if they would go through the proper procedures for adopting the guidance formally. There are also implications around how this guidance applies to non-regulated financial institutions.

Investment management - According to the new investment management regulation, securities used for investment, risk management, or cash management purposes cannot count toward meeting regulatory liquidity standards. Investments can have multiple purposes with no impact on safety and soundness. The FCA requirement that an investment serves a single purpose is unduly burdensome and increases costs for System institutions and, ultimately, their customers. There is no parallel to this requirement in commercial banking regulations and it should be removed. Sec. 615.5143.

Preferred stock issuances - FCA is currently allowed 60-days to consider and approve preferred stock offerings of System institutions. This 60-day approval window can preclude a System institution from taking advantage of market conditions and result in a more costly preferred stock issuance. FCA could reduce costs to System institutions while maintaining the integrity of the preferred stock offering process by establishing a shelf registration process. Such a process could provide for a standardized preferred stock offering and be valid for a set period of time. FCA could approve the terms and conditions of the offering and a System institution could then wait for advantageous market conditions. When the institutions determined that market conditions were right, it would submit revised recent financial results for expedited FCA approval and then issue the preferred stock. The regulations should be modified to provide for the "shelf" approval concept. Sec. 615.5255(f).

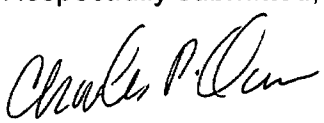
Financial Assistance Corporation – All Financial Assistance Corporation bonds have been retired and the Corporation ceased to exist. All references in FCA regulations to the Financial Assistance Corporation should be removed. Sec. 615.5206, 615.5208, and 630.20(i)(A).

Consumer Lending - System institutions note that consumer lending regulations, primarily administered by the Consumer Financial Protection Bureau, often overlap and

are sometimes inconsistent with existing FCA Regulations. Consumer lending in general, and rural home financing in particular, are a small but important segment of the System's loan portfolio. We encourage the Agency to work with the CFPB to avoid overlap and duplication where possible, and to seek cost effective regulatory requirements that achieve the goals of fair and complete disclosure and consumer protection.

Again, we thank the FCA for this opportunity to comment on this important rule-making effort. We urge the agency to move forward with its consideration of the comments received, and to adopt new rules as soon as you have completed your review. Please do not hesitate to contact me if we can provide any other information.

Respectfully submitted,



Charles P. Dana
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